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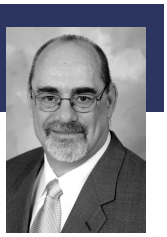
The Arizona Medical Digest

An Arizona Medical Board Publication

A Letter from the Executive Director

Barry A. Cassidy, Ph.D., PA-C



If there is one word to sum up the events of the last fiscal year, it is "efficiency". While it is not a word often used to describe State government, it was the Arizona Medical Board's efficient operations last year that protected physician licensing fees from being thrown into the fray of the State's budget woes. In fact, because of the Board's efficiency, more services have been provided to physicians and the public without increasing licensing fees. One of the most recent services added is the new "DocFinder" website.

Over the years, the Arizona Medical Board has been nationally recognized for its physician profiling system—providing consumers the resources they need to make informed health care decisions. Last month, the Board launched a new website, http://docfinder.state.az.us, which further propelled the Board's efficient operations by partnering with six other state heath care professional licensing agencies. The site combines public profiles of allopathic, osteopathic and naturopathic physicians, dentists, optometrists, chiropractors and physician assistants. In the past, searches for these health care providers would have taken visits to seven different licensing boards. The new site delivers immediate access within minutes.

For those physicians who are used to referring to directories provided by each regulatory board, the DocFinder website makes referring provider phone numbers and addresses fast and easy. It also makes contacting providers who previously treated their patients a less cumbersome process. For instance, if a patient can only remember part of her physician's name, just the first few letters of the last name need to be entered to pull up a match for every licensed MD, DO, PA, naturopath, optometrist, dentist, and chiropractor in the state.

This is just one example of types of services the public and physician community can expect from the Board. I encourage you to continually track the Board's progress as new services such as on-line licensing and renewals are added. The Board will also develop an on-line testing program for Arizona statutes and other health care delivery issues as well as interactive videos to aid physicians appearing before the Board. This is an exciting time for technological advances and the Arizona Medical Board looks forward to using the advantages technology brings.

New Laws Of Interest To You

Tina D. Wilcox, Legislative Liaison

The Arizona Medical Board tracked approximately 115 bills this past legislative session relating to healthcare professionals, Board operations, state agency issues, etc. While the Governor signed many of the bills tracked, three are of particular interest to the Arizona Medical Board and its licensees. The new laws go into effect September 18, 2003.

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BOARD MEETING DATES

August 13-14, 2003

October 8-9, 2003

December 10-11, 2003

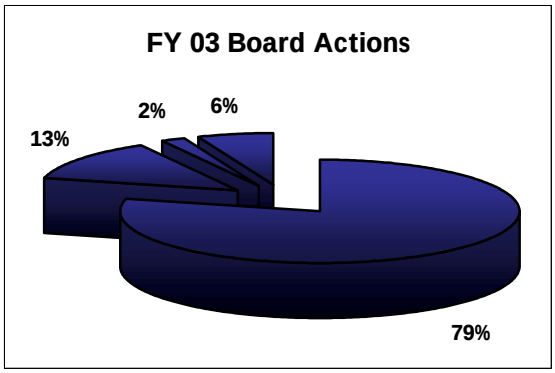
A Brief Overview of the Investigative Process

Beatriz Garcia Stamps, M.D., MBA , Medical Director

"To be the fairest medical board in the United States" is the vision of the Arizona Medical Board Executive Director Barry A. Cassidy, Ph.D., P.A.-C.

The primary duty and therefore the mission of the AMB is "to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of allopathic medicine" according to A.R.S §32-1403(A). These actions are statutory obligations supported by Board members, physicians and the public without dispute. When a complaint is filed against a physician, the Board is bound by statute to conduct an investigation while providing due process of the law to the physician against whom the complaint and/or allegation has been made. The physician's right to fair and due process is supported by the courts of law.

To achieve these goals, the Board and its staff have embarked and undergone recent significant changes in their investigative processes and information technology management systems. Various Six Sigma process management techniques and tools have already been implemented to improve investigative efficiency and quality while setting investigative definitions and standards. Increased efficiencies are resulting in faster resolution of complaints while still providing a fair review process to the physicians and the complainant. Maximizing the performance of the investigative process, the quality of its investigations and communication with the public and physicians are the focus of these efforts.



The Board's Quality of Care Division investigates complaints received from the public, healthcare institutions, or from malpractice awards, settlements or judgments. When investigating these cases, the Quality of Care Division will research the proposed standards of care and/or practice, the alleged deviations and the actual or potential harm. The standard of care is generally defined as the practice of a reasonable and prudent physician in a given clinical situation. These standards of care are frequently reflected as guideline practices recommended by accredited societies or organizations or studies published in peer-reviewed journals or other publications. These criteria are then identified and analyzed in the investigative process.

Principal Investigative Steps:

- After contact with the complainant and physician a review is conducted by health care staff.
- Allegations are categorized and prioritized based on seriousness.
- The complaint, physician's response, supporting documents and other additional information is then reviewed by peer physicians, the Medical Director, a Board Committee and the Executive Director. The Executive Director is authorized to dismiss cases if the allegations are not supported in the investigation.
- If the allegations are supported, the case is forwarded for a full presentation to the Board for resolution.
- The Board may dismiss a case, issue a non-disciplinary advisory letter or after a formal interview, order a disciplinary action. The Board may also forward a case for a formal hearing or it can be requested by a physician.

In fiscal year 2003, the Board received 1,240 complaints and resolved 952 of them. Of these complaints, 73% received were investigated as alleged violations. Of these, approximately 80% were regarded as quality of care issues. Included among the most frequent alleged violations are "any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public" (q) and "conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient" (ll). After a full investigation 79% of the cases were dismissed, 13% were issued disciplinary orders, 2% were non-disciplinary orders and 6% were for advisory letters (see above chart).

In closing, the following comments are made:

- The standard of care and deviations are the focus of investigations.
- The most frequent complaints involve poor communication with the patient or family and poor clinical documentation. Improvement of these areas is the most frequent advice provided by claims prevention experts.
- A.R.S §32-1401 details "unprofessional conduct" by physicians. This can be found on the Board's website or in the Board's annual *Medical Directory* .

The Board and its staff welcomes recommendations from physicians and the public.

New Laws Of Interest To You

(Continued from page 1)

HB 2207, Arizona Medical Board

HB 2207 was introduced by the Arizona Medical Board, and essentially clarifies several areas of statute. The Board has added definitions for the terms "limit" and "restrict". When the Board limits a physician's license, the Board takes a non-disciplinary action. When the Board restricts a physician's license, the Board takes a disciplinary action. Also, physicians are no longer required to report all criminal convictions and no contest pleas to the Board. The reporting requirement has been narrowed to convictions and no contest pleas of felonies and misdemeanors involving moral turpitude. Lastly, an exemption from the internet-prescribing prohibition was created that allows for the issuance of certain standing orders at county and tribal health departments.

HB 2361, Health Professionals, Crime Reporting

HB 2361 creates a new reporting requirement for all health care professionals, including allopathic physicians. Health care professionals must report charges alleged concerning felonies and misdemeanors involving conduct that may affect patient safety to their respective regulatory boards within ten business days. Following the report, the regulatory boards may conduct an investigation based upon the allegations. Licensees and applicants for licensing must comply with these requirements. Noncompliance with the statute is deemed an act of unprofessional conduct and the regulatory boards may impose a civil penalty of up to $1000 for noncompliance. It is required that each board devise a list of misdemeanors, reported by its regulated public, and is required to furnish that list upon demand. The Arizona Medical Board is in the process of generating a list of misdemeanors and, once finalized, will be post the list on its website.

HB 2483, Health Professionals, Public Information

HB 2483 is probably the Board's most anticipated piece of legislation. This bill eliminates the Board's requirement to post dismissals to a physician's public profile on the Internet. This information will still be released to the public if requested. However, it will no longer appear as part of the physician's public profile on the Internet. The Arizona Medical Association introduced this legislation, with the full support of the Board. The bill also requires a health profession regulatory board to provide certain information (e.g. copies of board minutes, board orders, etc.) to the public. The information required under this new statute is already provided on the Board's website.

Recent Court of Appeals Decision: Non-Physician Referrals

A recent Court of Appeals decision now requires a physician to report adverse information to patients who were referred by a non-physician (such as an employer), not just to the referring entity. The Court found that there is a duty on physicians when they examine someone who is not referred by another physician to inform the patient of any adverse information. An excerpt from the Court of Appeals decision is as follows:

> …If a physician examines a patient who is referred by a non-physician and discovers any matter of concern or any abnormality in the examination the physician MUST directly communicate that finding to the patient. ("[When] there is no referring physician . . . the duty shifts to the testing physician . . . to ensure that [he/she] contacts a responsible person to alert that person to the presence of the matter of concern or abnormality.") *Stanley v. McCarver*, 394 Ariz. Adv. Rep. 38, 63 P.3d 1076, 1082 (App. Feb. 25, 2003).

Physicians who violate the Court of Appeals decision could be subject to discipline by the Board. Failure to report adverse information to a patient could result in unprofessional conduct for either: (1) a practice that is or might be harmful or dangerous to the health of the patient or the public or (2) conduct that the board determines is gross negligence, repeated negligence or negligence resulting in the harm to or the death of a patient. (A.R.S. §32-1401(24)(q)(ll)).

Can't Get Enough?

The *MD Digest* is only mailed to in-state physicians twice a year. However, the *MD Digest Update* is posted on-line every other month. Log on to www.azmdboard.org and don't miss an issue!

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Losing Freedom, or Am I Disruptive?

The following is an excerpt from an article entitled, Losing Freedom, or Am I Disruptive? By John Henry Pfifferling, M.D.

Physicians who are disciplined by their practices, medical executive committees, or medical boards, lose some or all of their professional freedom. The consequences of discipline are economic, status, social, emotional and legal stressors.

We can reduce such stress by increasing physician's abilities to self-correct their behavior. Early and honest confrontation by peers of alleged disruptive behavior can also reduce the costs of late-stage intervention and escalation....

Disruptive behavior has perceptual, cultural, and ambiguous elements. Single incidents of outrageous behavior are easier to deal with than a subtle pattern of interpersonal violations and threat. Most authorities agree that a pattern of a person's behavior that: undermines or is felt to undermine practice morale; heightens unnecessary turnover; promotes ineffectiveness in teamwork; increases the risk of substandard care; intimidates or threatens harm to others; and disproportionately cases distress to peers, staff, and others in the practice, exemplifies disruptive behavior.

Disruptive physicians provoke fear, manifest inappropriate anger, and instill in others the threat of harm (Irons, 1994). Disruptive physicians rarely acknowledge their harmful impact on others. They infrequently articulate their own awareness of others' perception. They appear to suffer from anosognosia, a lack of insight, into their own behavior. As Richard Irons writes, "The inherent problem is that of abuse of power or position for personal gain or to avoid blame or responsibility for adverse outcomes."

Examples of disruptive behavior:

- Fails to comply with practice standards
- Uses foul, abusive language
- Acts in ways that are perceived as sexual harassment
- Criticizes staff in front of others
- Shames others for negative outcomes
- Arbitrarily sidesteps policies
- Threatens staff or associates with retribution, litigation or violence
- Discourteous to and disrespectful of others in the healthcare team

For a complete copy of this article, contact the Center for Professional Well-Being at: 21 West Colony Place, Suite 150, Durham, N.C. 27705